Assembly Bill No. 1160

Passed the Assembly September 8, 1999

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Chief Clerk of the Assembly

Passed the Senate September 3, 1999

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Secretary of the Senate

This bill was received by the Governor this _____ day

of _____, 1999, at _____ o'clock ____M.

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Private Secretary of the Governor

CHAPTER _____

An act to add Section 12528.5 to the Government Code, to amend Sections 1267.5, 1276.5, 1333, 1336.2, 1337.1, 1337.2, 1337.3, 1417.3, 1420, 1422, 1424, 1428, 1430, 1436, 1438, and 1599.1 of, and to add Sections 1276.6, 1325.1, 1417.15, 1417.4, and 1424.05 to, the Health and Safety Code, and to amend Sections 14124.7 and 15630 of, and to add Section 14126.02 to, the Welfare and Institutions Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1160, Shelley. Long-term health care facilities: skilled nursing facilities.

(1) Existing law establishes in the office of the Attorney General the Bureau of Medi-Cal Fraud which is authorized to conduct a statewide program for investigating and prosecuting, and referring for prosecution, violations of all applicable laws pertaining to fraud in the administration of the Medi-Cal program.

This bill would require the bureau to annually submit to the Legislature a report on the nature and extent of crimes in this state against patients in health facilities receiving payments from the Medi-Cal program and the response of the criminal justice system to those crimes.

(2) Existing law requires each applicant for a license to operate a skilled nursing facility or intermediate care facility to make certain disclosures regarding ownership and officers to the department.

This bill would revise these disclosure requirements. The bill would require that the information required by these disclosure provisions be included in the department's automated certification licensing administration information management system. The bill would require the department to develop and implement regulations for purposes of these provisions.

(3) Existing law requires the department to adopt regulations setting forth the minimum number of equivalent nursing hours, as defined, per patient

required in skilled nursing and intermediate care facilities. Existing law provides that the minimum number of actual nursing hours per patient required in a skilled nursing facility shall be 3.2 hours.

This bill would state findings and declarations of the Legislature regarding designated minimum goals for direct care staffing. The bill would require that the minimum number of actual nursing hours per patient per day required in skilled nursing facilities start at 3.2 hours, effective January 1, 2000, and increase as provided in the bill to 3.5 hours, effective January 1, 2003. The bill would redefine ''nursing hours.''

(4) Existing law authorizes the director to file a petition in the superior court for appointment of a receiver for any long-term health care facility whenever certain conditions exist, including, whenever circumstances exist indicating that continued management of the facility by the current licensee would present a substantial probability or imminent danger of serious physical harm or death to patients, as specified.

This bill would authorize the director to appoint a temporary manager when (a) the residents of the long-term health care facility are in immediate danger of death or permanent injury by virtue of the failure to comply with federal or state requirements or (b) the facility fails to comply with requirements applicable when patients need to be transferred as a result of a change in the status of license or operation of the facility and the department determines that the facility is unwilling or unable to meet those requirements. The bill would require the department to adopt, by December 31, 2000, regulations for the administration of this provision.

(5) Existing law provides for the reimbursement of the state for the salary of a receiver from the revenue of the facility and provides that if the revenues are inadequate the reimbursement amount shall constitute a lien upon the assets of the facility.

This bill would apply these provisions, in addition, to the salary of a temporary manager. The bill would provide, instead, that if the revenues of the facility are

inadequate, the reimbursement amount shall constitute a lien upon the assets of the licensee or the licensee's parent or subsidiary corporations.

(6) Existing law requires a long-term care facility to submit a proposed relocation plan for affected patients to the department for comment if 10 or more patients are likely to be transferred due to any voluntary change in the status of the license or operation of a facility.

This bill would also require these facilities to submit the proposed relocation plan if 10 or more patients are likely to be transferred due to any involuntary change in the status of the license or operation of the facility.

(7) Existing law requires a skilled nursing or intermediate care facility to adopt an approved training program that meets standards established by the department. Existing law requires that the precertification training program consist of specified hours of classroom training and instructional content and hours of on-the-job training clinical practice.

This bill would revise the precertification training program requirements to increase the minimum classroom hours of training required and add certain resident abuse prevention, recognition, and reporting instruction. The bill would also add special training to the clinical practice requirements.

(8) Existing law sets forth certification requirements for certified nurse assistants.

This bill would prohibit an uncertified nurse assistant from providing direct patient care in a skilled nursing or intermediate care facility unless certain requirements are met.

(9) Existing law requires the department to prepare and maintain a list of approved training programs for nurse assistant certification. Existing law specifies certain requirements for an approved training program of a skilled nursing or intermediate care facility.

This bill would require these training programs to meet certain requirements. The bill would make certain requirements under existing law inoperative on January 1, 2005. The bill would require the department, in

consultation with the State Department of Education and other appropriate organizations, to perform various duties with regard to the curriculum and examinations for approved training programs and career ladder opportunities for certified nurse assistants.

(10) Existing law, the Long-Term Care, Health, Safety, and Security Act of 1973, declares the intent of the Legislature to establish a citation system for the imposition of civil sanctions against long-term health care facilities in violation of state laws and regulations relating to patient care, an inspection and reporting system, and a provisional licensing mechanism.

The bill would authorize the director to issue a provisional license to a licensee if certain conditions exist. The bill would require the department to adopt regulations for the administration of this provision.

The bill would require a long-term health care facility to post notice as provided under the bill if certain remedies are imposed for a violation of state or federal requirements. The bill would also make any violation of this notice requirement a class ''B'' violation.

(11) Existing law requires the department to promote quality in long-term health care facility services through specified activities.

This bill would authorize the department to use designated quality assurance information for purposes of this provision.

This bill would require the department to initiate a study, by January 1, 2001, designed to test methods of providing program support for long-term health care facilities.

(12) Existing law requires the department to assign an inspector to make a preliminary review of any complaint received against a long-term health care facility and notify the complainant of the name of the assigned inspector.

This bill would define ''complaint'' for purposes of this provision and require the department to notify the complainant of the assigned inspector's name within 5 working days of the receipt of the complaint. The bill

would require the department to make an onsite inspection or investigation within 24 hours of the receipt of a complaint in any case in which there is a serious threat of imminent danger of death or serious bodily harm. The bill would require the department to provide certain notice to the complainant prior to the commencement of the onsite inspection and to the complainant and the facility within 10 working days of completion of the complaint investigation.

(13) Existing law requires a copy of any citation issued against a long-term health care facility as a result of certain complaint procedures to be sent to each complainant.

This bill would require that the copy of the citation be sent to each complainant by certified or registered mail.

(14) Existing law requires the department to conduct annual inspections of long-term health care facilities, except facilities that have not had serious violations within the last 12 months, and in any case to inspect every facility at least once every 2 years.

This bill would require that the department vary the cycle for conducting these inspections to reduce the predictability of the inspections.

(15) Existing law classifies a citation issued against long-term care facilities according to the nature of the violation, in order of decreasing seriousness, as class ''AA,'' class ''A,'' and class ''B'' violations, and provides for various civil penalties.

This bill would increase the civil penalties for a skilled nursing facility and an intermediate care facility as defined with regard to these violations. The bill would require that citations issued to these facilities be issued within one year of the date the department was first notified of the violation, or within one year of the date of the annual survey, whichever is later.

The bill would require the department to convene a workgroup to examine the process used to determine when a long-term care facility has done what might be reasonably be expected to comply with a regulation for purposes of the issuance and appeal of citations.

(16) Existing law specifies procedures for a licensee of a long-term health care facility who desires to contest a citation or the proposed assessment of a civil penalty.

This bill would revise this process to require that the licensee first post security as provided in the bill to contest a citation, or in the alternative complete the contesting and appeals process and if the citation and civil penalty is upheld, pay the civil penalty with interest as provided in the bill.

(18) Existing law authorizes a resident or patient of a skilled nursing or intermediate care facility to bring civil action against a licensee of the facility who violates any rights set forth in the Patients Bill of Rights under state regulations. The licensee is liable for up to $500.

This bill would increase the liability to a range of $1,000 to $2,500.

(19) Existing law requires the department to provide for additional and ongoing training for inspectors charged with implementation of provisions regulating long-term health care facilities in investigative techniques and standards relating to the quality of care provided by long-term health care facilities.

This bill would require the department to develop an interdisciplinary skilled nursing facility training program to educate and inform skilled nursing facility staff, inspectors, and advocates.

(20) Existing law requires the department to review the effectiveness of certain enforcement provisions in maintaining the quality of care provided by long-term care facilities and submit a report on the enforcement activities.

This bill would require the department to submit the report on or before December 1, 2000, and annually thereafter, regarding these enforcement activities.

(21) Existing law requires skilled nursing and intermediate care facilities to establish and make available, as prescribed, written policies regarding the rights of patients. Existing law requires that the procedures ensure that each patient admitted to the

facility has certain rights and is notified of certain facility obligations, in addition to those specified by regulation.

This bill would add to the list of rights of a patient of, and the obligations of a facility that a resident of a nursing facility may appeal the facility's refusal to readmit him or her, if the resident has been hospitalized in an acute care hospital and asserts his or her right to readmission pursuant to bed hold provisions or readmission rights of either state or federal law. The bill would require that the appeal be adjudicated by a state hearing officer designated to adjudicate appeals of transfers and discharges of nursing facility residents. The bill would require the facility to readmit the resident who has filed an appeal pending the final determination of the hearing officer, unless specified conditions apply.

(22) Existing law prohibits a long-term health care facility that participates as a provider under the Medi-Cal program from transferring or seeking to evict out of the facility any resident as a result of the resident changing his or her manner of purchasing the services from private payment or Medicare to Medi-Cal benefits and for whom an eligibility determination has not yet been made.

This bill would specify that transferring a resident within the facility, or seeking to evict a resident out of the facility is prohibited under this provision, except that a facility may transfer a resident from a private room to a semi-private room if the resident changes to Medi-Cal payment status. The bill would provide that this provision applies to residents who have made a timely application to Medi-Cal benefits and for whom an eligibility determination has not yet been made.

(23) Existing law provides for the reimbursement of long-term care facilities providing services under the Medi-Cal program according to an established methodology.

This bill would require the department to establish, no later than January 1, 2001, a new Medi-Cal reimbursement system for skilled nursing facilities, excluding distinct part nursing facilities, as defined.

The bill would require the department to establish the minimum number of nursing hours for skilled nursing facilities as provided under the bill and implement the standards concurrent with the implementation of the new system.

The bill would require that the total reimbursement to skilled nursing facilities under the Medi-Cal program shall comply with the applicable provisions of the state medicaid plan and shall be subject to an appropriation by the Legislature.

(24) Existing law requires certain mandated reporters who are responsible for care and custody of, or provide care or services to, elder or dependent adults to report known or suspected instances of abuse that has occurred at a long-term care facility, with specified exceptions, to the local ombudsman or the local law enforcement agency. Existing law requires the local ombudsman or the local law enforcement agency to report any case of known or suspected abuse to the department and any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud, as soon as is practical.

This bill would require, in addition, that the department report any case of known or suspected criminal activity to the bureau as soon as is practical. The bill would also require that all of the reports of known or suspected criminal activity made by the department, local ombudsman, and local law enforcement agency to the bureau be made as soon as is practical, unless it appears that any delay would cause destruction of evidence or any other disturbance of a crime scene by nonpeace officer personnel, in which case, the report shall be made immediately.

This bill would state the intent of the Legislature with regard to studying the manner in which long-term health care facilities that participate as providers under the Medi-Cal program make transfers within the facility, or evict out of the facility, any resident as a result of the resident changing his or her manner of purchasing the services from private payment or to Medicare to Medi-Cal. The bill would also state the intent of the

Legislature to strive for uniformity and consistency in its statewide practices in surveying long-term health care facilities so that variations will be lessened.

This bill would proclaim the week commencing on the first Monday of May as ''Long-Term Care Ombudsman Week'' in recognition of the valuable services provided by long-term care ombudsmen.

This bill would incorporate additional changes in Section 1337.3 of the Health and Safety Code, proposed by AB 656, to be operative only if AB 656 and this bill are both chaptered and become effective January 1, 2000, and this bill is chaptered last.

This bill would incorporate additional changes in Section 15630 of the Welfare and Institutions Code, proposed by AB 739, to be operative only if AB 739 and this bill are both chaptered and become effective January 1, 2000, and this bill is chaptered last.

The people of the State of California do enact as follows:

SECTION 1. Section 12528.5 is added to the Government Code, to read:

12528.5. The Bureau of Medi-Cal Fraud shall annually submit to the Legislature a report on the nature and extent of crimes in this state against patients in health facilities receiving payments from the Medi-Cal program and the response of the criminal justice system to those crimes.

SEC. 2. Section 1267.5 of the Health and Safety Code is amended to read:

1267.5. (a) (1) Each applicant for a license to operate a skilled nursing facility or intermediate care facility shall disclose to the state department the name and business address of each general partner if the applicant is a partnership, or each director and officer if the applicant is a corporation, and each person having a beneficial ownership interest of 5 percent or more in the applicant corporation or partnership.

(2) If any person described in paragraph (1) has served or currently serves as an administrator, general

partner, trustee or trust applicant, sole proprietor of any applicant or licensee who is a sole proprietorship, executor, or corporate officer or director of, or has held a beneficial ownership interest of 5 percent or more in, any other skilled nursing facility or intermediate care facility or in any community care facility licensed pursuant to Chapter 3 (commencing with Section 1500) of this division, the applicant shall disclose the relationship to the state department, including the name and current or last address of the health facility or community care facility and the date the relationship commenced and, if applicable, the date it was terminated.

(3) (A) If the facility is operated by, or proposed to be operated in whole or part under, a management contract, the names and addresses of any person or organization, or both, having an ownership or control interest of 5 percent or more in the management company shall be disclosed to the state department.

(B) If the management company is a subsidiary of one or more other organizations, the information shall include the names and addresses of the parent organizations of the subsidiary and the names and addresses of any officer or director of the parent organizations. The failure to comply with this subparagraph may result in action to revoke or deny a license. However, once the information that is required under this subparagraph is provided, the action to revoke the license shall terminate.

(4) If the applicant or licensee is a subsidiary of one or more other organizations, the information shall include the names and addresses of the parent organizations of the subsidiary and the names and addresses of any officer or director of the parent organizations.

(5) The information required by this subdivision shall be provided to the department upon initial application for licensure, and any change in the information shall be provided to the department within 30 calendar days of that change.

(6) Except as provided in subparagraph (B) of paragraph (3), the failure to comply with this section may result in action to revoke or deny a license.

(7) The information required by this section shall be made available to the public upon request, shall be included in the public file of the facility, and shall be included in the department's automated certification licensing administration information management system.

(8) The department shall develop and implement regulations to enact this subdivision.

(b) On and after January 1, 1990, no person may acquire a beneficial interest of 5 percent or more in any corporation or partnership licensed to operate a skilled nursing facility or intermediate care facility, or in any management company under contract with a licensee of a skilled nursing facility or intermediate care facility, nor may any person become an officer or director of, or general partner in, a corporation, partnership, or management company of this type without the prior written approval of the state department. Each application for departmental approval pursuant to this subdivision shall include the information specified in subdivision (a) as regards the person for whom the application is made.

The state department shall approve or disapprove the application within 30 days after receipt thereof, unless the state department, with just cause, extends the application review period beyond 30 days.

(c) The state department may deny approval of a license application or of an application for approval under subdivision (b) if a person named in the application, as required by this section, was an officer, director, general partner, or owner of a 5-percent or greater beneficial interest in a licensee of, or in a management company under contract with a licensee of, a skilled nursing facility, intermediate care facility, community care facility, or residential care facility for the elderly at a time when one or more violations of law were committed therein that resulted in suspension or revocation of its license, or at a

time when a court-ordered receiver was appointed pursuant to Section 1327, or at a time when a final Medi-Cal decertification action was taken under federal law. However, the prior suspension, revocation, or court-ordered receivership of a license shall not be grounds for denial of the application if the applicant shows to the satisfaction of the state department (1) that the person in question took every reasonably available action to prevent the violation or violations that resulted in the disciplinary action and (2) that he or she took every reasonably available action to correct the violation or violations once he or she knew, or with the exercise of reasonable diligence should have known of, the violation or violations.

(d) No application shall be denied pursuant to this section until the state department first (1) provides the applicant with notice in writing of grounds for the proposed denial of application, and (2) affords the applicant an opportunity to submit additional documentary evidence in opposition to the proposed denial.

(e) Nothing in this section shall cause any individual to be personally liable for any civil penalty assessed pursuant to Chapter 2.4 (commencing with Section 1417) of this division or create any new criminal or civil liability contrary to general laws limiting that liability.

(f) This section shall not apply to a bank, trust company, financial institution, title insurer, controlled escrow company, or underwritten title company to which a license is issued in a fiduciary capacity.

(g) As used in this section, ‘‘person’’ has the same meaning as specified in Section 19.

(h) This section shall not apply to the directors of a nonprofit corporation exempt from taxation under Section 23701d of the Revenue and Taxation Code that operates a skilled nursing facility or intermediate care facility in conjunction with a licensed residential facility, where the directors serve without financial compensation and are not compensated by the nonprofit corporation in any other capacity.

SEC. 3. Section 1276.5 of the Health and Safety Code is amended to read:

1276.5. (a) (1) The Legislature finds and declares that one major factor in the quality of care in skilled nursing facilities in California is the direct care staffing in those facilities.

(2) It is the intent of the Legislature that over time direct care staffing in skilled nursing facilities shall increase in order to improve the quality of care in skilled nursing facilities.

(3) The Legislature finds and declares that the goal for direct care staffing in skilled nursing facilities is as follows:

(A) For registered nurses and licensed vocational nurses, one nurse to 15 patients on the day shift, one nurse to 20 patients on the evening shift, and one nurse to 30 patients on the night shift.

(B) For certified nurse assistants, one certified nurse assistant to five patients on the day shift, one certified nurse assistant to 10 patients on the evening shift, and one certified nurse assistant to 15 patients on the night shift.

(C) The minimum goals set forth in this paragraph shall only become effective to the extent Medi-Cal rates are prospectively adjusted and funding is appropriated for this purpose in the annual Budget Act.

(4) The Legislature finds and declares that increases in direct care staffing are required to begin immediately and to be increased over time to reduce the current understaffing at many skilled nursing facilities.

(b) The department shall adopt regulations setting forth the minimum number of actual nursing hours per patient per day required in skilled nursing and intermediate care facilities, subject to the specific requirements of Section 14110.7 of the Welfare and Institutions Code. However, notwithstanding Section 14110.7 of the Welfare and Institutions Code or any other law, the minimum number of actual nursing hours per patient required in a skilled nursing facility shall be as follows:

(1) Effective April 1, 2000, 3.2 hours.

(2) Effective January 1, 2001, 3.3 hours.

(3) Effective January 1, 2002, 3.4 hours.

(4) Effective January 1, 2003, 3.5 hours.

(c) Subdivision (b) shall not apply to a facility that is predominantly a special treatment program, as described in Section 72443 of Title 22 of the California Code of Regulations.

(d) The incremental increase in the minimum number of nursing hours per patient required in a skilled nursing facility set forth in subdivision (b) shall only become effective to the extent Medi-Cal rates are prospectively adjusted and funding is appropriated for this purpose in the annual Budget Act.

(e) The daily minimum hours per patient set forth in subdivision (b) shall be taken into account in the determination of Medi-Cal reimbursement levels for skilled nursing facilities. For purposes of subdivision (b) and this subdivision, the Legislature and the Governor shall have the sole authority to determine the amount that shall be appropriated for purposes of staffing increases required by subdivision (b). Nursing facilities may challenge by appropriate administrative or judicial procedures the reasonableness of the prospective rate calculated by the department. However, the alleged inadequacy of the prospective rate established for purposes of this subdivision by the department shall not be a defense to a citation for failure to comply with the staffing requirements of subdivision (b) or otherwise excuse noncompliance with those staffing requirements.

(f) For the purposes of this section, ''nursing hours'' means the number of actual hours of work performed per patient day by aides, nursing assistants, orderlies, registered nurses and licensed vocational nurses (except directors of nursing in facilities of 60 or larger capacity) and, in the distinct part of facilities and freestanding facilities providing care for the developmentally disabled or mentally disordered, by licensed psychiatric technicians who perform direct nursing services for patients in skilled nursing and intermediate care facilities, except when the skilled nursing and intermediate care facility is licensed as a part of a state

hospital, and except that nursing hours for skilled nursing facilities means the actual hours of work, without doubling the hours performed per patient day by registered nurses and licensed vocational nurses.

(g) (1) Effective April 1, 2000, facilities with a July 1999 undoubled staffing level below 3.2 hours shall spend the funds received pursuant to this section to reach the prescribed minimum staffing level. Facilities with an undoubled staffing level at or above 3.2 hours shall spend the funds received pursuant to this section on additional staffing, wages, benefits, wages or any combination of these for nonsupervisory personnel. The funds appropriated by the Budget Act of 1999 shall not be reduced due to the April 1, 2000 implementation date to comply with the minimum staffing levels.

(2) (A) Facilities with a July 1999 doubled staffing level at or above 3.2 hours and an undoubled staffing level below 2.8 hours shall qualify for a temporary exception to the minimum staffing levels if they can demonstrate to the department's satisfaction that they meet all of the following criteria:

(i) Good faith efforts are being made to hire the additional staff necessary to meet the new minimum staffing levels and a plan has been developed for full compliance by January 1, 2001.

(ii) All of the staffing funds received are being spent to employ additional staff.

(iii) Current staffing mix is justified by the facility's specific resident population.

(iv) The exception does not jeopardize the residents' health or safety.

(v) Staffing has been increased by no less than 0.2 nursing hours per patient day, effective September 1, 2000, and an additional 0.2 nursing hours per patient day, effective November 1, 2000, as verified in progress reports to the department.

(B) This paragraph shall cease to be operative on January 1, 2001.

(3) (A) Facilities granted an exception under this subdivision shall not be subject to a citation or civil action

solely for failing to meet the minimum staffing levels, as prescribed in this section, during the exception period.

(B) This paragraph shall cease to be operative on January 1, 2001.

(4) In calculating Medi-Cal rates for the future rate year beginning August 2000 and two rate years thereafter, the State Department of Health Services shall add, in addition to any other identified adjustments, an amount necessary to fully implement the requirements of this section on an annualized basis, based on the April 1, 2000, implementation date.

(h) In implementing Section 14126.02 of the Welfare and Institutions Code, the department shall adopt regulations setting forth the minimum number of actual hours per patient, that shall not be less than provided for in subdivision (b), on the basis of care needs as determined through a standard resident assessment process.

(i) Notwithstanding Section 1276, the department shall require the utilization of a registered nurse at all times if the department determines that the services of a skilled nursing and intermediate care facility require the utilization of a registered nurse.

(j) (1) Except as otherwise provided by law, the administrator of an intermediate care facility/developmentally disabled, intermediate care facility/developmentally disabled habilitative, or an intermediate care facility/developmentally disabled—nursing shall be either a licensed nursing home administrator or a qualified mental retardation professional as defined in Section 483.430 of Title 42 of the Code of Federal Regulations.

(2) To qualify as an administrator for an intermediate care facility for the developmentally disabled, a qualified mental retardation professional shall complete at least six months of administrative training or demonstrate six months of experience in an administrative capacity in a licensed health facility, as defined in Section 1250, excluding those facilities specified in subdivisions (e), (h), and (i) of Section 1250.

(k) Nothing in this section is intended to encourage the replacement of licensed staff with unlicensed staff.

SEC. 4. Section 1325.1 is added to the Health and Safety Code, to read:

1325.1. (a) It is the intent of the Legislature in enacting this section to empower the State Department of Health Services to take quick, effective action to protect the health and safety of residents of long-term health care facilities and to minimize the effects of transfer trauma that accompany the abrupt transfer of elderly and disabled residents.

(b) For purposes of this section, ''temporary manager'' means the person appointed temporarily by the department as a substitute facility manager or administrator with authority to hire, terminate, or reassign staff, obligate facility funds, alter facility procedures, and manage the facility to correct deficiencies identified in the facility's operation.

(c) The director may appoint a temporary manager when any of the following circumstances exist:

(1) The residents of the long-term health care facility are in immediate danger of death or permanent injury by virtue of the failure of the facility to comply with federal or state requirements applicable to the operation of the facility.

(2) As a result of a change in the status of the license or operation of a long-term health care facility, the facility is required to comply with Section 1336.2, the facility fails to comply with Section 1336.2, and the department has determined that the facility is unwilling or unable to meet the requirements of Section 1336.2.

(d) (1) The appointment of a temporary manager pursuant to this section shall become effective immediately and shall authorize the temporary manager to act pursuant to this section upon the department's personal service upon the administrator and licensee of a statement of cause and concerns specifying the factual and legal basis for the imposition of the temporary manager. The statement of cause and concerns shall be

supported by the declaration of the director or the director's authorized designee.

(2) The temporary manager shall take all necessary steps and make best efforts to eliminate immediate danger of death or permanent injury to residents or complete transfers of residents to alternative placements pursuant to Section 1336.2.

(e) (1) The licensee of a long-term health care facility may contest the appointment of the temporary manager at any time by filing a petition for an order to terminate the appointment of the temporary manager with the Office of Administrative Hearings. The office shall assign the case to an administrative law judge. On the same day as the petition is filed with the Office of Administrative Hearings, a copy of the petition shall be received by the office of the director of the department. This petition shall be accompanied by a cover sheet, stating in at least 24-point type that a hearing must be held within five days.

(2) The administrative law judge shall have a hearing on the petition for an order to terminate the appointment of the temporary manager within five business days of the filing of the petition by the licensee of the long-term health care facility and shall issue a decision on the petition within five business days of the hearing. The five-day time period for holding the hearing and rendering a decision may be extended by the agreement of all of the parties involved. At the hearing the administrative law judge shall uphold the appointment of the temporary manager if the department proves, by a preponderance of the evidence, that the circumstances specified in subdivision (c) apply to the facility. The administrative law judge shall order the appointment of the temporary manager terminated if the burden of proof is not satisfied.

(3) The decision of the administrative law judge sitting alone on the petition for an order to terminate the appointment of the temporary manager is subject to judicial review as provided in Section 1094.5 of the Code of Civil Procedure by the superior court sitting in the county where the facility is located. This review may be

requested by the licensee of the facility or the department by filing a petition seeking relief from the order. The petition may also request the issuance of temporary injunctive relief pending the decision on the petition. The superior court shall hold a hearing within five business days of the filing of the petition and shall issue a decision on the petition within five days of the hearing.

(f) (1) If the licensee of the long-term health care facility petitions the administrative law judge pursuant to subdivision (e), the appointment of the temporary manager by the director pursuant to this section shall continue until it is terminated by the administrative law judge or by the superior court, or it shall continue for 30 days from the date the administrative law judge or the superior court upholds the appointment of the temporary manager, whichever is sooner.

(2) At a subsequent hearing before the administrative law judge or the superior court, at the request of the director, the administrative law judge or the superior court, may extend the appointment of the temporary manager as follows:

(A) Upon a showing by the department that the conditions specified in subdivision (c) continue to exist, an additional 60 days.

(B) Upon a finding that the department is seeking a receiver, until the department has secured the services of a receiver pursuant to Article 8 (commencing with Section 1325) of Chapter 2.

(3) If the licensee of the long-term health care facility does not protest the appointment, it shall continue until the conditions described in subdivision (c) no longer exist or the department has secured the services of a receiver pursuant to Article 8 (commencing with Section 1325) of Chapter 2.

(4) If the administrative law judge extends the appointment of the temporary manager pursuant to this subdivision, the licensee may request review as provided in Section 1094.5 of the Code of Civil Procedure by the

superior court as specified in paragraph (3) of subdivision (e).

(g) The department may be represented by legal counsel within the department for purposes of court proceedings authorized under this section.

(h) At any time during the appointment of the temporary manager, the department may terminate the appointment if the circumstances described in subdivision (c) are corrected.

(i) The department shall adopt regulations for the administration of this section by December 31, 2000.

SEC. 5. Section 1333 of the Health and Safety Code is amended to read:

1333. To the extent state funds are advanced or expended for the salary of the receiver or temporary manager or for other expenses in connection with the receivership or temporary management, the state shall be reimbursed from the revenues accruing to the facility. If the revenues are insufficient to reimburse the state, the unreimbursed amount shall constitute a lien upon the assets of the licensee or the licensee's parent or subsidiary corporations, including, but not limited to, the licensed facility or other facilities owned or operated by the licensee, parent, or subsidiary, or the proceeds from the sale or sales thereof.

SEC. 6. Section 1336.2 of the Health and Safety Code is amended to read:

1336.2. (a) When patients are transferred due to any change in the status of the license or operation of a facility, including voluntary or involuntary termination of a facility's Medi-Cal or Medicare certification, the facility shall take reasonable steps to transfer affected patients safely and minimize possible transfer trauma by, at a minimum, doing all of the following:

(1) Medically assess, prior to transfer, the patient's condition and susceptibility to adverse health consequences, including psychosocial effects, in the event of transfer. The patient's physician and surgeon, if available, shall undertake this assessment. The assessment shall provide recommendations, including counseling

and followup visits, for preventing or ameliorating potential adverse health consequences in the event of transfer.

(2) Provide, in accordance with these assessments, counseling, and other recommended services, prior to transfer, to any affected patient who may suffer adverse health consequences due to transfer.

(3) Evaluate, prior to transfer, the relocation needs of the patient and the patient's family and determine the most appropriate and available type of future care and services for the patient. The health facility shall discuss the evaluation and medical assessment with the patient or the patient's guardian, agent, or responsible party and make the evaluation and assessment part of the medical records for transfer.

(4) Inform, at least 30 days in advance of the transfer, the patient or patient's guardian, agent, or responsible party of alternative facilities that are available and adequate to meet patient and family needs.

(5) Arrange for appropriate, future medical care and services, unless the patient or patient's guardian has otherwise made these arrangements. This requirement does not obligate a facility to pay for future care and services.

(b) The facility shall provide an appropriate team of professional staff to perform the services required in subdivision (a).

(c) The facility shall also give written notice to affected patients or their guardians, agents, or responsible parties advising them of the requirements in subdivision (a) at least 30 days in advance of transfer. If a facility is required to give written notice pursuant to Section 1336, then the notice shall advise the affected patient or the patient's guardian, agent, or responsible party of the requirements in subdivision (a). If the transfer is made pursuant to subdivision (f), the notice shall include notification to the patient that the transfer plan is available to the patient or patient's representative free of charge upon request.

(d) In the event of a temporary suspension of a facility's license pursuant to Section 1296, the 30-day notice requirement in subdivision (c) shall not apply, but the facility shall provide the relocation services required in subdivision (a) unless the state department provides the services pursuant to subdivision (e).

(e) The state department may provide, or arrange for the provision of, necessary relocation services at a facility, including medical assessments, counseling, and placement of patients, if the state department determines that these services are needed promptly to prevent adverse health consequences to patients, and the facility refuses, or does not have adequate staffing, to provide the services. In these cases, the facility shall reimburse the state department for the cost of providing the relocation services. If a facility's refusal to provide the relocation services required in subdivision (a) endangers the health and safety of patients to be transferred, then the state department may also request that the Attorney General's office or the local district attorney's office seek injunctive relief and damages in the same manner as provided for in Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code.

(f) If 10 or more patients are likely to be transferred due to any voluntary or involuntary change in the status of the license or operation of a facility, including voluntary or involuntary termination of a facility's Medi-Cal or Medicare certification, the facility shall submit a proposed relocation plan for the affected patients to the state department for comment, if any, at least 45 days prior to the transfer of any patient. The plan shall provide for implementation of the relocation services in subdivision (a) and shall describe the availability of beds in the area for patients to be transferred, the proposed discharge process, and the staffing available to assist in the transfers. The facility shall submit its final relocation plan to the local ombudsperson, and if different from the proposed plan, to the state

department, at least 30 days prior to the transfer of any patient.

SEC. 7. Section 1337.1 of the Health and Safety Code is amended to read:

1337.1. A skilled nursing or intermediate care facility shall adopt an approved training program that meets standards established by the state department. The approved training program shall consist of at least the following:

(a) An orientation program to be given to newly employed nurse assistants prior to providing direct patient care in skilled nursing or intermediate care facilities.

(b) (1) Effective January 1, 2000, a precertification training program consisting of at least 60 classroom hours of training on basic nursing skills, patient safety and rights, the social and psychological problems of patients, and resident abuse prevention, recognition, and reporting pursuant to subdivision (e). The 60 classroom hours of training may be conducted within a skilled nursing or intermediate care facility or in an educational institution.

(2) In addition to the 60 classroom hours of training required under paragraph (1), the precertification training program shall consist of at least 100 hours of supervised and on-the-job training clinical practice. The 100 hours may consist of normal employment as a nurse assistant under the supervision of either the director of nurse training or a licensed nurse. The 100 hours shall consist of at least four hours of supervised training to address the special needs of persons with developmental and mental disorders, including mental retardation, Alzheimer's disease, cerebral palsy, epilepsy, dementia, Parkinson's disease, and mental illness.

(3) In a precertification training program subject to this subdivision, credit shall be given for the training received in an approved precertification training program adopted by another skilled nursing or intermediate care facility.

(4) This subdivision shall not apply to a skilled nursing or intermediate care facility that demonstrates to the state department that it employs only nurse assistants with a valid certification.

(c) Continuing in-service training to assure continuing competency in existing and new nursing skills.

(d) Each facility shall consider including training regarding the characteristics and method of assessment and treatment of acquired immune deficiency syndrome (AIDS).

(e) (1) Effective January 1, 2000, the approved training program shall include a minimum of six hours of instruction on preventing, recognizing, and reporting instances of resident abuse utilizing those courses developed pursuant to Section 13823.93 of the Penal Code for hospital-based training centers.

(2) Effective January 1, 2000, a minimum of four hours of instruction on preventing, recognizing, and reporting instances of resident abuse shall be included within the total minimum hours of continuing education required and in effect as of January 1, 2000, for certified nursing assistants.

SEC. 8. Section 1337.2 of the Health and Safety Code is amended to read:

1337.2. (a) An applicant for certification as a certified nurse assistant shall comply with each of the following:

(1) Be at least 16 years of age.

(2) Have successfully completed a training program approved by the department, which includes an examination to test the applicant’s knowledge and skills related to basic patient care services.

(3) Obtain a criminal record clearance pursuant to Section 1338.5.

(b) The state department may establish procedures for issuing certificates which recognize certification programs in other states and countries.

(c) Upon written application, criminal record clearance pursuant to Section 1338.5, and documentation of passing an appropriate competency examination, the state department may issue a certificate to any applicant

who possesses a valid state license as either a licensed vocational nurse or a registered nurse issued by any other state or foreign country, and who, in the opinion of the state department, has the qualifications specified in this article.

(d) Upon written application, criminal record clearance pursuant to Section 1338.5, and documentation of passing an appropriate examination, the state department may issue a certificate to any applicant who has completed the fundamentals of nursing courses in a school for registered nurses, approved by the Board of Registered Nursing, or in a school for licensed vocational nurses, approved by the Board of Vocational Nurse and Psychiatric Technician Examiners, which are substantially equivalent to the certification training program specified in this article.

(e) Every person certified as a nurse assistant under this article may be known as a ''certified nurse assistant'' and may place the letters CNA after his or her name when working in a licensed health facility. An individual working independently, providing personal care services, may not advertise or represent himself or herself as a certified nurse assistant.

(f) Any person holding a nurse assistant certificate issued by the state department prior to January 1, 1988, may continue to hold himself or herself out as a certified nurse assistant until January 1, 1991. Thereafter, it shall be unlawful for any person not certified under this article to hold himself or herself out to be a certified nurse assistant. Any person willfully making any false representation as being a certified nurse assistant is guilty of a misdemeanor.

(g) Any person who violates this article is guilty of a misdemeanor and, upon a conviction thereof, shall be punished by imprisonment in the county jail for not more than 180 days, or by a fine of not less than twenty dollars ($20) nor more than one thousand dollars ($1,000), or by both such fine and imprisonment.

(h) Effective January 1, 2005, an uncertified nurse assistant may provide direct patient care in a skilled

nursing facility or intermediate care facility only if the uncertified nurse assistant is participating in an approved training program and under supervision in accordance with training program regulations. The hours of direct care provided to residents by an uncertified nurse assistant pursuant to this subdivision shall not be counted as direct care hours by the facility but shall be paid for by the facility.

SEC. 9. Section 1337.3 of the Health and Safety Code is amended to read:

1337.3. (a) The state department shall prepare and maintain a list of approved training programs for nurse assistant certification. The list shall include training programs conducted by skilled nursing or intermediate care facilities, as well as local agencies and education programs. Clinical portions of the training programs may be obtained as on-the-job training, supervised by a qualified director of staff development or licensed nurse.

(b) It shall be the duty of the state department to inspect a representative sample of training programs. The state department shall protect consumers and students in any training program against fraud, misrepresentation, or other practices that may result in improper or excessive payment of funds paid for training programs. If the state department determines that any training program is not complying with regulations, notice thereof in writing shall be immediately given to the program. If the program has not been brought into compliance within a reasonable time, the program may be removed from the approved list and notice thereof in writing given to it. Programs removed under this article shall be afforded an opportunity to request reinstatement of program approval at any time.

(c) Notwithstanding provisions of Section 1337.1, the approved training program shall consist of at least the following:

(1) A 16-hour orientation program to be given to newly employed nurse assistants prior to providing direct patient care, and consistent with federal training

requirements for facilities participating in the Medicare or medicaid programs.

(2) (A) A certification training program consisting of at least 60 classroom hours of training on basic nursing skills, patient safety and rights, the social and psychological problems of patients, and elder abuse recognition and reporting pursuant to subdivision (e) of Section 1337.1. The 60 classroom hours of training may be conducted within a skilled nursing facility, an intermediate care facility, or an educational institution.

(B) In addition to the 60 classroom hours of training required under subparagraph (A), the certification program shall also consist of 100 hours of supervised and on-the-job training clinical practice. The 100 hours may consist of normal employment as a nurse assistant under the supervision of either the director of staff development or a licensed nurse. The 100 hours shall consist of at least four hours of supervised training to address the special needs of persons with developmental and mental disorders, including mental retardation, Alzheimer's disease, cerebral palsy, epilepsy, dementia, Parkinson's disease, and mental illness.

(d) The state department, in consultation with the State Department of Education and other appropriate organizations, shall develop criteria for approving training programs, that includes program content for orientation, training, inservice and the examination for testing knowledge and skills related to basic patient care services and shall develop a plan that identifies and encourages career ladder opportunities for certified nurse assistants. This group shall also recommend, and the department shall adopt, regulation changes necessary to provide for patient care when facilities utilize noncertified nurse assistants who are performing direct patient care. The requirements of this subdivision shall be established by January 1, 1989. This subdivision shall become inoperative on January 1, 2005.

(e) (1) On or before January 1, 2003, the state department, in consultation with the State Department

of Education, the American Red Cross, and other appropriate organizations, shall do the following:

(A) Develop a standardized curriculum for approved training programs for certified nurse assistants and criteria for approving training programs, that includes program content for orientation, training, in-service programs, and the examination for testing knowledge and skills related to basic patient care services.

(B) Review the current examination for approved training programs for certified nurse assistants to ensure the accurate assessment of whether a nurse assistant has obtained the required knowledge and skills related to basic patient care services and that shall be consistent with the standardized curriculum developed pursuant to subparagraph (A).

(C) Develop a plan that identifies and encourages career ladder opportunities for certified nurse assistants, including the application of on-the-job post-certification hours to educational credits.

(2) On or before January 1, 2004, the group established for purposes of paragraph (1) shall recommend, and the department shall adopt, regulation changes necessary to provide for the certification training programs.

(f) A skilled nursing or intermediate care facility shall determine the number of specific clinical hours within each module identified by the state department required to meet the requirements of subdivision (d), subject to subdivisions (b) and (c). The facility shall consider the specific hours recommended by the state department when adopting the certification training program required by this chapter.

(g) This article shall not apply to a program conducted by any church or denomination for the purpose of training the adherents of the church or denomination in the care of the sick in accordance with its religious tenets.

SEC. 9.5. Section 1337.3 of the Health and Safety Code is amended to read:

1337.3. (a) The state department shall prepare and maintain a list of approved training programs for nurse assistant certification. The list shall include training

programs conducted by skilled nursing or intermediate care facilities, as well as local agencies and education programs. In addition, the list shall include information on whether a training center is currently training nurse assistants, their competency test pass rates, and the number of nurse assistants they have trained. Clinical portions of the training programs may be obtained as on-the-job training, supervised by a qualified director of staff development or licensed nurse.

(b) It shall be the duty of the state department to inspect a representative sample of training programs. The state department shall protect consumers and students in any training program against fraud, misrepresentation, or other practices that may result in improper or excessive payment of funds paid for training programs. In evaluating a training center's training program, the state department shall examine each training center's trainees' competency test passage rate, and require each program to maintain an average 60 percent test score passage rate to maintain its participation in the program. The average test score passage rate shall be calculated over a two-year period. If the state department determines that any training program is not complying with regulations or is not meeting the competency passage rate requirements, notice thereof in writing shall be immediately given to the program. If the program has not been brought into compliance within a reasonable time, the program may be removed from the approved list and notice thereof in writing given to it. Programs removed under this article shall be afforded an opportunity to request reinstatement of program approval at any time. The state department's district offices shall inspect facility-based centers as part of their annual survey.

(c) Notwithstanding provisions of Section 1337.1, the approved training program shall consist of at least the following:

(1) A 16-hour orientation program to be given to newly employed nurse assistants prior to providing direct patient care, and consistent with federal training

requirements for facilities participating in the Medicare or medicaid programs.

(2) (A) A certification training program consisting of at least 60 classroom hours of training on basic nursing skills, patient safety and rights, the social and psychological problems of patients, and elder abuse recognition and reporting pursuant to subdivision (e) of Section 1337.1. The 60 classroom hours of training may be conducted within a skilled nursing facility, an intermediate care facility, or an educational institution.

(B) In addition to the 60 classroom hours of training required under subparagraph (A), the certification program shall also consist of 100 hours of supervised and on-the-job training clinical practice. The 100 hours may consist of normal employment as a nurse assistant under the supervision of either the director of staff development or a licensed nurse. The 100 hours shall consist of at least four hours of supervised training to address the special needs of persons with developmental and mental disorders, including mental retardation, Alzheimer's disease, cerebral palsy, epilepsy, dementia, Parkinson's disease, and mental illness.

(d) The state department, in consultation with the State Department of Education and other appropriate organizations, shall develop criteria for approving training programs, that includes program content for orientation, training, inservice and the examination for testing knowledge and skills related to basic patient care services and shall develop a plan that identifies and encourages career ladder opportunities for certified nurse assistants. This group shall also recommend, and the department shall adopt, regulation changes necessary to provide for patient care when facilities utilize noncertified nurse assistants who are performing direct patient care. The requirements of this subdivision shall be established by January 1, 1989. This subdivision shall become inoperative on January 1, 2005.

(e) (1) On or before January 1, 2003, the state department, in consultation with the State Department

of Education, the American Red Cross, and other appropriate organizations, shall do the following:

(A) Develop a standardized curriculum for approved training programs for certified nurse assistants and criteria for approving training programs, that includes program content for orientation, training, in-service programs, and the examination for testing knowledge and skills related to basic patient care services.

(B) Review the current examination for approved training programs for certified nurse assistants to ensure the accurate assessment of whether a nurse assistant has obtained the required knowledge and skills related to basic patient care services and that shall be consistent with the standardized curriculum developed pursuant to subparagraph (A).

(C) Develop a plan that identifies and encourages career ladder opportunities for certified nurse assistants, including the application of on-the-job postcertification hours to educational credits.

(2) On or before January 1, 2004, the group established for purposes of paragraph (1) shall recommend, and the department shall adopt, regulation changes necessary to provide for the certification training programs.

(f) A skilled nursing or intermediate care facility shall determine the number of specific clinical hours within each module identified by the state department required to meet the requirements of subdivision (d), subject to subdivisions (b) and (c). The facility shall consider the specific hours recommended by the state department when adopting the certification training program required by this chapter.

(g) This article shall not apply to a program conducted by any church or denomination for the purpose of training the adherents of the church or denomination in the care of the sick in accordance with its religious tenets.

(h) The Chancellor of the California Community Colleges shall provide to the state department a standard process for approval of college credit. The state department shall make this information available to all training programs in the state.

SEC. 10. Section 1417.15 is added to the Health and Safety Code, immediately after Section 1417.1, to read:

1417.15. (a) The director may issue a provisional license to the licensee of a long-term health care facility if all of the following conditions are met:

(1) The facility is involuntarily terminated from the Medi-Cal or Medicare program.

(2) The facility has attempted to reapply for participation in the Medi-Cal or Medicare program.

(3) The facility has failed to regain ''in compliance status'' for purposes of participation in the Medi-Cal or Medicare program.

(b) (1) A provisional license issued pursuant to this section shall terminate six months from the date of issuance, unless extended by the department.

(2) At least 90 days prior to the termination of the provisional license, the department shall give the facility a full and complete inspection. If the facility meets all applicable requirements for licensure, a regular license shall be issued.

(3) If the facility does not meet the requirements for licensure, but has made substantial progress toward meeting the requirements, as determined by the department, the initial provisional license shall be renewed for six months.

(4) If the department determines that there has not been substantial progress toward meeting licensure requirements at the time of the first full inspection provided by this subdivision, or, at any subsequent inspection, the provisional license shall be terminated and no further license shall be issued.

(5) The facility may request a hearing, in writing, within 10 days of the receipt of notice from the department terminating the provisional license. The provisional license shall remain in effect during the pendency of the administrative hearing.

(6) The administrative hearing specified in paragraph (5) shall be held in accordance with Section 100171. The hearing officer shall uphold the termination of the license if the department proves by a preponderance of the

evidence that the licensee did not meet the requirements of licensure. The hearing officer shall issue a decision no later than 90 days after the request for the hearing was made by the facility.

(c) If one or more of the following remedies is actually imposed for violation of state or federal requirements, the long-term health care facility shall post a notice of the imposed remedy or remedies, in a form specified by the department, on all doors providing ingress to or egress from the facility. For purposes of this subdivision, a distinct part nursing facility shall only be required to post the notice on all main doors providing ingress to or egress from the distinct part, and not on all of the doors providing ingress to or egress from the hospital. An intermediate care facility/developmentally disabled habilitative and an intermediate care facility/developmentally disabled-nursing shall post this notice on the inside of all doors providing ingress to or egress from the facility.

(1) License suspension.

(2) Termination of certification for Medicare or Medi-Cal.

(3) Denial of payment by Medicare or Medi-Cal for all otherwise eligible residents.

(4) Denial of payment by Medicare or Medi-Cal for otherwise eligible incoming residents.

(5) Ban on admission of any type.

(d) A violation of the requirement of subdivision (c) shall be a class ''B'' violation, as defined in subdivision (e) of Section 1424.

(e) The department shall adopt regulations for the administration of this section.

SEC. 11. Section 1417.3 of the Health and Safety Code is amended to read:

1417.3. (a) The department shall promote quality in long-term health care facility services through specific activities that include, but are not limited to, all of the following:

(1) Research and evaluation of innovative facility resident care models.

(2) Provision of statewide training on effective facility practices.

(3) Response to facility requests for technical assistance regarding licensing and certification requirements, compliance with federal and state standards, and related operational issues.

(4) Provide information and identify areas of recurring problems.

(b) The department may use quality assurance information to promote quality in long-term health care facility services. The quality assurance information may include, but is not limited to, the following:

(1) Assessments of the quality of care in terms of the actual impact on, and satisfaction of, residents.

(2) Past facility survey performance.

(3) Other information deemed appropriate by the department to assess, implement, and encourage quality improvements and prevention activities.

(c) The department may use the quality assurance information identified pursuant to this subdivision for the education of the facilities, consumers, and interested parties, and for other appropriate activities.

(d) Nothing in this section is intended to diminish the department's ongoing survey and enforcement processes.

SEC. 12. Section 1417.4 is added to the Health and Safety Code, to read:

1417.4. (a) Subject to subdivision (g), the department shall initiate, by January 1, 2001, a study designed to test methods of providing program support for long-term health care facilities, that shall include, but not be limited to, options for department and industry practices with the goal of improving the quality of resident care in long-term health care facilities, including on-site review of facility practices.

(b) The study shall be developed in consultation with representatives from consumer groups, labor organizations, provider organizations, academic institutions, resident counsels, and other interested parties.

(c) Normal survey activities shall not be reduced because of the study.

(d) Facilities participating in the study shall continue to be subject to normal survey processes required under state and federal law.

(e) The results of the study shall be evaluated by an organization or entity outside of the department.

(f) The department shall fund this study through grants or other funding sources and shall not reduce funding for survey or compliance activities to fund a study under this section.

(g) The study shall cease to exist if opposed by the federal Health Care Financing Administration.

SEC. 13. Section 1420 of the Health and Safety Code is amended to read:

1420. (a) For purposes of this section, ''complaint'' means any oral or written notice to the state department of an alleged violation of applicable requirements of state or federal law or of any alleged facts that might constitute such a violation.

(b) (1) Upon receipt of a written or oral complaint, the state department shall assign an inspector to make a preliminary review of the complaint and shall notify the complainant within five working days of receipt of the complaint of the name of the inspector. Unless the state department determines that the complaint is willfully intended to harass a licensee or is without any reasonable basis, it shall make an onsite inspection or investigation within 10 working days of the receipt of the complaint. However, in any case in which there is a serious threat of imminent danger of death or serious bodily harm, the state department shall make an onsite inspection or investigation within 24 hours of the receipt of the complaint.

(2) Upon the request of either the complainant or the state department, the complainant or his or her representative, or both, may be allowed to accompany the inspector to the site of the alleged violations during his or her tour of the facility, unless the inspector determines that the privacy of any patient would be

violated thereby. Prior to the commencement of the onsite inspection or investigation, the complainant shall be promptly informed of the state department's proposed course of action and of his or her right to accompany the inspector on the inspection or investigation of the facility.

(3) When conducting an onsite inspection or investigation pursuant to this section, the state department shall collect and evaluate all available evidence and may issue a citation based upon, but not limited to, all of the following:

(A) Observed conditions.

(B) Statements of witnesses.

(C) Facility records. At the time of the inspection, the facility shall make copies of any records requested for purposes of the investigation.

(c) Within 10 working days of completion of the complaint investigation, the state department shall notify the complainant in writing of the department's determination as a result of the inspection or investigation.

(d) Upon being notified of the state department's determination as a result of the inspection or investigation, a complainant who is dissatisfied with the state department's determination, regarding a matter which would pose a threat to the health, safety, security, welfare, or rights of a resident, shall be notified by the state department of the right to an informal conference, as set forth in this section. The complainant may, within five business days after receipt of the notice, notify the director in writing of his or her request for an informal conference. The informal conference shall be held with the designee of the director for the county in which the long-term health care facility which is the subject of the complaint is located. The long-term health care facility may participate as a party in this informal conference. The director's designee shall notify the complainant and licensee of his or her determination within 10 working days after the informal conference and shall apprise the complainant and licensee in writing of the appeal rights provided in subdivision (e).

(e) If the complainant is dissatisfied with the determination of the director's designee in the county in which the facility is located, the complainant may, within 15 days after receipt of this determination, notify in writing the Deputy Director of the Licensing and Certification Division of the state department, who shall assign the request to a representative of the Complainant Appeals Unit for review of the facts that led to both determinations. As a part of the Complainant Appeals Unit's independent investigation, and at the request of the complainant, the representative shall interview the complainant in the district office where the complaint was initially referred. Based upon this review, the Deputy Director of the Licensing and Certification Division of the state department shall make his or her own determination and notify the complainant and the facility within 30 days.

(f) Any citation issued as a result of a conference or review provided for in subdivision (d) or (e) shall be issued and served upon the facility within three working days of the final determination, unless the licensee agrees in writing to an extension of this time. Service shall be effected either personally or by registered or certified mail. A copy of the citation shall also be sent to each complainant by certified or registered mail.

(g) A miniexit conference shall be held with the administrator or his or her representative upon leaving the facility at the completion of the investigation to inform him or her of the status of the investigation. The department shall also state the items of noncompliance and compliance found as a result of a complaint and those items found to be in compliance, provided the disclosure maintains the anonymity of the complainant. In any matter in which there is a reasonable probability that the identity of the complainant will not remain anonymous, the department shall also state that it is unlawful to discriminate or seek retaliation against the complainant.

SEC. 14. Section 1422 of the Health and Safety Code is amended to read:

1422. (a) The Legislature finds and declares that it is the public policy of this state to assure that long-term health care facilities provide the highest level of care possible. The Legislature further finds that inspections are the most effective means of furthering this policy. It is not the intent of the Legislature by the amendment of subdivision (b) enacted by Chapter 1595 of the Statutes of 1982 to reduce in any way the resources available to the state department for inspections, but rather to provide the state department with the greatest flexibility to concentrate its resources where they can be most effective.

(b) (1) Without providing notice of these inspections, the state department shall, in addition to any inspections conducted pursuant to complaints filed pursuant to Section 1419, conduct inspections annually, except with regard to those facilities which have no class ''AA,'' class ''A,'' or class ''B'' violations in the past 12 months. The state department shall also conduct inspections as may be necessary to assure the health, safety, and security of patients in long-term health care facilities. Every facility shall be inspected at least once every two years. The department shall vary the cycle in which inspections of long-term health care facilities are conducted to reduce the predictability of the inspections.

(2) The state department shall submit to the federal Department of Health and Human Services on or before July 1, 1985, for review and approval, a request to implement a three-year pilot program designed to lessen the predictability of the long-term health care facility inspection process. Two components of the pilot program shall be (A) the elimination of the present practice of entering into a one-year certification agreement, and (B) the conduct of segmented inspections of a sample of facilities with poor inspection records, as defined by the state department. At the conclusion of the pilot project, an analysis of both components shall be conducted by the state department to determine effectiveness in reducing inspection predictability and the respective cost benefits. Implementation of this pilot project is contingent upon

federal approval. The state department shall report annually to the Legislature on progress of the pilot project with a final report at the end of the third year.

(c) Except as otherwise provided in subdivision (b), the state department shall conduct unannounced direct patient care inspections at least annually to inspect physician and surgeon services, nursing services, pharmacy services, dietary services, and activity programs of all the long-term health care facilities. Facilities evidencing repeated serious problems in complying with this chapter or a history of poor performance, or both, shall be subject to periodic unannounced direct patient care inspections during the inspection year. The direct patient care inspections shall assist the state department in the prioritization of its efforts to correct facility deficiencies.

(d) All long-term health care facilities shall report to the state department any changes in the nursing home administrator or the director of nursing services within 10 calendar days of the changes.

(e) Within 90 days after the receipt of notice of a change in the nursing home administrator or the director of nursing services, the state department may conduct an abbreviated inspection of the long-term health care facilities.

(f) If a change in a nursing home administrator occurs and the Board of Nursing Home Administrators notifies the state department that the new administrator is on probation or has had his or her license suspended within the previous three years, the state department shall conduct an abbreviated survey of the long-term health care facility employing that administrator within 90 days of notification.

SEC. 15. Section 1424 of the Health and Safety Code is amended to read:

1424. Citations issued pursuant to this chapter shall be classified according to the nature of the violation and shall indicate the classification on the face thereof.

(a) In determining the amount of the civil penalty, all relevant facts shall be considered, including, but not limited to, the following:

(1) The probability and severity of the risk that the violation presents to the patient's or resident's mental and physical condition.

(2) The patient's or resident's medical condition.

(3) The patient's or resident's mental condition and his or her history of mental disability or disorder.

(4) The good faith efforts exercised by the facility to prevent the violation from occurring.

(5) The licensee's history of compliance with regulations.

(b) Relevant facts considered by the department in determining the amount of the civil penalty shall be documented by the department on an attachment to the citation and available in the public record. This requirement shall not preclude the department or a facility from introducing facts not listed on the citation to support or challenge the amount of the civil penalty in any proceeding set forth in Section 1428.

(c) Class ''AA'' violations are violations that meet the criteria for a class ''A'' violation and that the state department determines to have been a direct proximate cause of death of a patient or resident of a long-term health care facility. A class ''AA'' citation is subject to a civil penalty in the amount of not less than five thousand dollars ($5,000) and not exceeding twenty-five thousand dollars ($25,000) for each citation. In any action to enforce a citation issued under this subdivision, the state department shall prove all of the following:

(1) The violation was a direct proximate cause of death of a patient or resident.

(2) The death resulted from an occurrence of a nature that the regulation was designed to prevent.

(3) The patient or resident suffering the death was among the class of persons for whose protection the regulation was adopted.

If the state department meets this burden of proof, the licensee shall have the burden of proving that the licensee

did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation. If the licensee sustains this burden, then the citation shall be dismissed.

For each class ''AA'' citation within a 12-month period that has become final, the state department shall consider the suspension or revocation of the facility's license in accordance with Section 1294. For a third or subsequent class ''AA'' citation in a facility within that 12-month period that has been sustained following a citation review conference, the state department shall commence action to suspend or revoke the facility's license in accordance with Section 1294.

(d) Class ''A'' violations are violations which the state department determines present either (1) imminent danger that death or serious harm to the patients or residents of the long-term health care facility would result therefrom, or (2) substantial probability that death or serious physical harm to patients or residents of the long-term health care facility would result therefrom. A physical condition or one or more practices, means, methods, or operations in use in a long-term health care facility may constitute a class ''A'' violation. The condition or practice constituting a class ''A'' violation shall be abated or eliminated immediately, unless a fixed period of time, as determined by the state department, is required for correction. A class ''A'' citation is subject to a civil penalty in an amount not less than one thousand dollars ($1,000) and not exceeding ten thousand dollars ($10,000) for each and every citation.

If the state department establishes that a violation occurred, the licensee shall have the burden of proving that the licensee did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation. If the licensee sustains this burden, then the citation shall be dismissed.

(e) Class ''B'' violations are violations that the state department determines have a direct or immediate

relationship to the health, safety, or security of long-term health care facility patients or residents, other than class ''AA'' or ''A'' violations. Unless otherwise determined by the state department to be a class ''A'' violation pursuant to this chapter and rules and regulations adopted pursuant thereto, any violation of a patient's rights as set forth in Sections 72527 and 73523 of Title 22 of the California Administrative Code, that is determined by the state department to cause or under circumstances likely to cause significant humiliation, indignity, anxiety, or other emotional trauma to a patient is a class ''B'' violation. A class ''B'' citation is subject to a civil penalty in an amount not less than one hundred dollars ($100) and not exceeding one thousand dollars ($1,000) for each and every citation. A class ''B'' citation shall specify the time within which the violation is required to be corrected. If the state department establishes that a violation occurred, the licensee shall have the burden of proving that the licensee did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation. If the licensee sustains this burden, then the citation shall be dismissed.

In the event of any citation under this paragraph, if the state department establishes that a violation occurred, the licensee shall have the burden of proving that the licensee did what might reasonably be expected of a long-term health care facility licensee, acting under similar circumstances, to comply with the regulation. If the licensee sustains this burden, then the citation shall be dismissed.

(f) (1) Any willful material falsification or willful material omission in the health record of a patient of a long-term health care facility is a violation.

(2) ''Willful material falsification,'' as used in this section, means any entry in the patient health care record pertaining to the administration of medication, or treatments ordered for the patient, or pertaining to services for the prevention or treatment of decubitus ulcers or contractures, or pertaining to tests and

measurements of vital signs, or notations of input and output of fluids, that was made with the knowledge that the records falsely reflect the condition of the resident or the care or services provided.

(3) ''Willful material omission,'' as used in this section, means the willful failure to record any untoward event that has affected the health, safety, or security of the specific patient, and that was omitted with the knowledge that the records falsely reflect the condition of the resident or the care or services provided.

(g) A violation of subdivision (e) may result in a civil penalty not to exceed ten thousand dollars ($10,000), as specified in paragraphs (1) to (3), inclusive.

(1) The willful material falsification or willful material omission is subject to a civil penalty of not less than two thousand five hundred dollars ($2,500) or more than ten thousand dollars ($10,000) in instances where the health care record is relied upon by a health care professional to the detriment of a patient by affecting the administration of medications or treatments, the issuance of orders, or the development of plans of care. In all other cases, violations of this subdivision are subject to a civil penalty not exceeding two thousand five hundred dollars ($2,500).

(2) Where the penalty assessed is one thousand dollars ($1,000) or less, the violation shall be issued and enforced, except as provided in this subdivision, in the same manner as a class ''B'' violation, and shall include the right of appeal as specified in Section 1428. Where the assessed penalty is in excess of one thousand dollars ($1,000), the violation shall be issued and enforced, except as provided in this subdivision, in the same manner as a class ''A'' violation, and shall include the right of appeal as specified in Section 1428.

Nothing in this section shall be construed as a change in previous law enacted by Chapter 11 of the Statutes of 1985 relative to this paragraph, but merely as a clarification of existing law.

(3) Nothing in this subdivision shall preclude the state department from issuing a class ''A'' or class ''B'' citation

for any violation that meets the requirements for that citation, regardless of whether the violation also constitutes a violation of this subdivision. However, no single act, omission, or occurrence may be cited both as a class ''A'' or class ''B'' violation and as a violation of this subdivision.

(h) The director shall prescribe procedures for the issuance of a notice of violation with respect to violations having only a minimal relationship to patient safety or health.

(i) Nothing in this section is intended to change existing statutory or regulatory requirements governing the ability of a licensee to contest a citation pursuant to Section 1428.

(j) The department shall ensure that district office activities performed under Sections 1419 to 1424, inclusive, are consistent with the requirements of these sections and all applicable laws and regulations. To ensure the integrity of these activities, the department shall establish a statewide process for the collection of postsurvey evaluations from affected facilities and utilize this information to enhance surveyor competence through additional training, evaluation, and supervision.

(k) The department shall convene a workgroup, including, but not limited to, consumer, provider, and organized labor representatives, to examine the process used to determine when a facility has done what might reasonably be expected to comply with a regulation. This workgroup shall assess the department's current consideration of reasonableness in the issuance and appeal of citations and, if necessary, identify appropriate criteria for determining reasonableness and provide the Legislature with specific recommendations of any required statutory changes related to this issue by July 1, 2000.

SEC. 16. Section 1424.05 is added to the Health and Safety Code, to read:

1424.05. (a) (1) Notwithstanding Section 1424, this section shall apply to a skilled nursing facility or an intermediate care facility as defined in paragraph (2).

(2) For purposes of this section, the following definitions shall apply:

(A) ‘‘Skilled nursing facility’’ shall have the same meaning as specified in subdivision (c) of Section 1250, except that it shall not include a facility that is predominantly a special treatment program as described in Section 72443 of Title 22 of the California Code of Regulations.

(B) ‘‘Intermediate care facility’’ shall have the same meaning as specified in subdivision (d) of Section 1250, except that it shall not include a facility that is predominantly a special treatment program as described in Section 72443 of Title 22 of the California Code of Regulations.

(b) Citations issued to skilled nursing or intermediate care facilities shall be issued within one year of the date the department was first notified of the violation, or within one year of the date of the annual survey, whichever is later.

(c) Notwithstanding subdivision (c) of Section 1424, a skilled nursing facility or an intermediate care facility is subject to a civil penalty in the amount of not less than twenty-five thousand dollars ($25,000) and not exceeding fifty thousand dollars ($50,000) for each class ‘‘AA’’ violation as described in subdivision (c) of Section 1424.

(d) Notwithstanding subdivision (d) of Section 1424, a skilled nursing facility or an intermediate care facility is subject to a civil penalty in the amount of not less than five thousand dollars ($5,000) and not exceeding twenty-five thousand dollars ($25,000) for each class ‘A‘ citation as described in subdivision (d) of Section 1424.

(e) Notwithstanding subdivision (e) of Section 1424, a skilled nursing facility or an intermediate care facility is subject to a civil penalty in the amount of not less than five hundred dollars ($500) and not exceeding two thousand five hundred dollars ($2,500) for each class ‘B‘ citation as described in subdivision (e) of Section 1424.

(f) Notwithstanding subdivision (g) of Section 1424, in cases in which a skilled nursing facility or an intermediate care facility is subject to a civil penalty not to exceed ten

thousand dollars ($10,000) for the willful material falsification or willful material omission in the health record of a patient, the following applies:

(1) Where the penalty assessed is five thousand dollars ($5,000) or less, the violation shall be issued and enforced, except as provided in subdivision (g) of Section 1424, in the same manner as a class ''B'' violation, and shall include the right of appeal as specified in Section 1428.05.

(2) Where the assessed penalty is in excess of five thousand dollars ($5,000), the violation shall be issued and enforced, except as provided in subdivision (g) of Section 1424, in the same manner as a class ''A'' violation, and shall include the right of appeal as specified in Section 1428.05.

SEC. 17. Section 1428 of the Health and Safety Code is amended to read:

1428. (a) If a licensee desires to contest a citation or the proposed assessment of a civil penalty, the licensee shall choose from either of the following alternatives:

(1) First post as security, in cash or cash equivalent, an amount equal to the civil penalty indicated. After posting security, the licensee shall use the processes described in subdivision (c). If upon the completion of the appeals process, it is determined that the civil penalty should be dismissed, waived, or reduced, the balance of the security, after deduction of any applicable penalties, shall remit back to the licensee. Any amount of the security posted that is returned shall be returned with interest accrued at a rate equal to the interest accrued in the Pooled Money Investment Account as provided under Section 926.19 of the Government Code.

(2) First use the processes described in subdivision (c). If upon completion of the process, the citation and civil penalty is upheld, the licensee shall pay the civil penalty with interest at the adjusted annual rate established by the Franchise Tax Board pursuant to Section 19521 of the Revenue and Taxation Code.

(b) As a result of a citation review conference, conducted pursuant to subdivision (c), a citation or the proposed assessment of a civil penalty may be affirmed, increased, decreased, or dismissed by the director or the

director's designee. If the director's designee affirms, increases, decreases, or dismisses the citation or proposed assessment of a civil penalty, he or she shall state with particularity in writing his or her reasons for that action, and shall immediately transmit a copy thereof to each party to the original complaint. If the licensee desires to contest a decision made after the citation review conference, the licensee shall inform the director in writing within 15 business days after he or she receives the decision by the director's designee.

(c) (1) If a licensee notifies the director that he or she intends to contest a class ''AA'' or a class ''A'' citation, the licensee may first, within 15 business days after service of the citation, notify the director in writing of his or her request for a citation review conference. The licensee shall inform the director in writing, within 15 business days of the service of the citation or the receipt of the decision of the director's designee after the citation review conference, of the licensee's intent to adjudicate the validity of the citation in the municipal or superior court in the county in which the long-term health care facility is located. In order to perfect a judicial appeal of a contested citation, a licensee shall file a civil action in the municipal or superior court in the county in which the long-term health care facility is located. The action shall be filed no later than 90 calendar days after a licensee notifies the director that he or she intends to contest the citation, or no later than 90 days after the receipt of the decision by the director's designee after the citation review conference, and served not later than 90 days after filing. Notwithstanding any other provision of law, a licensee prosecuting a judicial appeal shall file and serve an at-issue memorandum pursuant to Rule 209 of the California Rules of Court within six months after the state department files its answer in the appeal. Notwithstanding subdivision (d), the court shall dismiss the appeal upon motion of the state department if the at-issue memorandum is not filed by the facility within the period specified.

(2) If a licensee desires to contest a class ‘‘B’’ citation, the licensee may request, within 15 business days after service of the citation, a citation review conference, by writing the director or the director’s designee of the licensee’s intent to appeal the citation through the citation review conference. If the licensee wishes to appeal the citation which has been upheld in a citation review conference, the licensee shall, within 15 working days from the date the citation review conference decision was rendered, notify the director or the director’s designee that he or she wishes to appeal the decision through the procedures set forth in Section 100171 or elects to submit the matter to binding arbitration in accordance with subdivision (d). The administrative law judge may affirm, modify, or dismiss the citation or the proposed assessment of a civil penalty. The licensee may choose to have his or her appeal heard by the administrative law judge or submit the matter to binding arbitration without having first appealed the decision to a citation review conference by notifying the director in writing within 15 business days of the service of the citation.

(d) If a licensee is dissatisfied with the decision of the administrative law judge, the licensee may, in lieu of seeking judicial review of the decision as provided in Section 1094.5 of the Code of Civil Procedure, elect to submit the matter to binding arbitration by filing, within 60 days of its receipt of the decision, a request for arbitration with the American Arbitration Association. The parties shall agree upon an arbitrator designated from the American Arbitration Association in accordance with the association’s established rules and procedures. The arbitration hearing shall be set within 45 days of the election to arbitrate, but in no event less than 28 days from the date of selection of an arbitrator. The arbitration hearing may be continued up to 15 additional days if necessary at the arbitrator’s discretion. Except as otherwise specifically provided in this subdivision, the arbitration hearing shall be conducted in accordance with the American Arbitration Association’s established

rules and procedures. The arbitrator shall determine whether the licensee violated the regulation or regulations cited by the department, and whether the citation meets the criteria established in Sections 1423 and 1424. If the arbitrator determines that the licensee has violated the regulation or regulations cited by the department, and that the class of the citation should be upheld, the proposed assessment of a civil penalty shall be affirmed, subject to the limitations established in Section 1424. The licensee and the department shall each bear its respective portion of the cost of arbitration. A resident, or his or her designated representative, or both, entitled to participate in the citation review conference pursuant to subdivision (f), may make an oral or written statement regarding the citation, at any arbitration hearing to which the matter has been submitted after the citation review conference.

(e) If an appeal is prosecuted under this section, including an appeal taken in accordance with Section 100171, the state department shall have the burden of establishing by a preponderance of the evidence that (1) the alleged violation did occur, (2) the alleged violation met the criteria for the class of citation alleged, and (3) the assessed penalty was appropriate. The state department shall also have the burden of establishing by a preponderance of the evidence that the assessment of a civil penalty should be upheld. If a licensee fails to notify the director in writing that he or she intends to contest the citation, or the proposed assessment of a civil penalty therefor, or the decision made by the director's designee, after a citation review conference, within the time specified in this section, the decision by the director's designee after a citation review conference shall be deemed a final order of the state department and shall not be subject to further administrative review, except that the licensee may seek judicial relief from the time limits specified in this section. If a licensee appeals a contested citation or the assessment of a civil penalty, no civil penalty shall be due and payable unless and until the appeal is terminated in favor of the state department.

When the appeal is terminated in favor of the licensee, the department shall return the amount posted, minus any penalties due, within 10 days of written notice of the decision.

(f) The director or the director's designee shall establish an independent unit of trained citation review conference hearing officers within the state department to conduct citation review conferences. Citation review conference hearing officers shall be directly responsible to the deputy director for licensing and certification, and shall not be concurrently employed as supervisors, district administrators, or regional administrators with the licensing and certification division. Specific training shall be provided to members of this unit on conducting an informal conference, with emphasis on the regulatory and legal aspects of long-term health care.

Where the state department issues a citation as a result of a complaint or regular inspection visit, and a resident or residents are specifically identified in a citation by name as being specifically affected by the violation, then the following persons may attend the citation review conference:

(1) The complainant and his or her designated representative.

(2) A personal health care provider, designated by the resident.

(3) A personal attorney.

(4) Any person representing the Office of the State Long-Term Care Ombudsman, as defined in subdivision (c) of Section 9701 of the Welfare and Institutions Code.

Where the state department determines that residents in the facility were threatened by the cited violation but does not name specific residents, any person representing the Office of the State Long-Term Care Ombudsman, as defined in subdivision (c) of Section 9701 of the Welfare and Institutions Code, and a representative of the residents or family council at the facility may participate to represent all residents. In this case, these representatives shall be the sole participants for the residents in the conference. The residents or family

council shall designate which representative will participate.

The complainant, affected resident, and their designated representatives shall be notified by the state department of the conference and their right to participate. The director's designee shall notify the complainant or his or her designated representative and the affected resident or his or her designated representative, of his or her determination based on the citation review conference.

(g) In assessing the civil penalty for a violation, all relevant facts shall be considered, including, but not limited to, all of the following:

(1) The probability and severity of the risk which the violation presents to the patient's or resident's mental and physical condition.

(2) The patient's or resident's medical condition.

(3) The patient's or resident's mental condition and his or her history of mental disability.

(4) The good faith efforts exercised by the facility to prevent the violation from occurring.

(5) The licensee's history of compliance with regulations.

(h) Except as otherwise provided in this subdivision, an assessment of civil penalties for a class ''A'' or class ''B'' violation shall be trebled and collected for a second and subsequent violation for which a citation of the same class was issued within any 12-month period. Trebling shall occur only if the first citation issued within the 12-month period was issued in the same class, a civil penalty was assessed, and a plan of correction was submitted for the previous same-class violation occurring within the period, without regard to whether the action to enforce the previous citation has become final. However, the increment to the civil penalty required by this subdivision shall not be due and payable unless and until the previous action has terminated in favor of the state department.

If the class ''B'' citation is issued for a patient's rights violation, as defined in subdivision (c) of Section 1424, it

shall not be trebled unless the state department determines the violation has a direct or immediate relationship to the health, safety, security, or welfare of long-term health care facility residents.

(i) The director shall prescribe procedures for the issuance of a notice of violation with respect to violations having only a minimal relationship to safety or health.

(j) Actions brought under this chapter shall be set for trial at the earliest possible date and shall take precedence on the court calendar over all other cases except matters to which equal or superior precedence is specifically granted by law. Times for responsive pleading and for hearing the proceeding shall be set by the judge of the court with the object of securing a decision as to subject matters at the earliest possible time.

(k) If the citation is dismissed, the state department shall take action immediately to ensure that the public records reflect in a prominent manner that the citation was dismissed.

(*l*) Penalties paid on violations under this chapter shall be applied against the state department's accounts to offset any costs incurred by the state pursuant to this chapter. Any costs or penalties assessed pursuant to this chapter shall be paid within 30 days of the date the decision becomes final. If a facility does not comply with this requirement, the state department shall withhold any payment under the Medi-Cal program until the debt is satisfied. No payment shall be withheld if the state department determines that it would cause undue hardship to the facility or to patients or residents of the facility.

(m) The amendments made to subdivisions (a) and (c) of this section by Chapter 84 of the Statutes of 1988, to extend the number of days allowed for the provision of notification to the director, do not affect the right, that is also contained in those amendments, to request judicial relief from these time limits.

SEC. 18. Section 1430 of the Health and Safety Code is amended to read:

1430. (a) Except where the state department has taken action and the violations have been corrected to its satisfaction, any licensee who commits a class ''A'' or ''B'' violation may be enjoined from permitting the violation to continue or may be sued for civil damages within a court of competent jurisdiction. These actions for injunction or civil damages, or both, may be prosecuted by the Attorney General in the name of the people of the State of California upon his or her own complaint or upon the complaint of any board, officer, person, corporation or association, or by any person acting for the interests of itself, its members or the general public. The amount of civil damages which may be recovered in an action brought pursuant to this section shall not exceed the maximum amount of civil penalties which could be assessed on account of the violation or violations.

(b) A resident or patient of a skilled nursing facility, as defined in subdivision (c) of Section 1250, or of an intermediate care facility, as defined in subdivision (d) of Section 1250, may bring a civil action against the licensee of a facility who violates any rights of the resident or patient as set forth in the Patients Bill of Rights in Section 72527 of Title 22 of the California Administrative Code. The suit shall be brought in a court of competent jurisdiction. The licensee shall be liable for the acts of the licensee's employees. The licensee shall be liable for an amount of one thousand dollars ($1,000) to two thousand five hundred dollars ($2,500), depending upon the severity of the violation, and for costs and attorney fees, and may be enjoined from permitting the violation to continue. An agreement by a resident or patient of a skilled nursing facility or an intermediate care facility to waive his or her rights to sue pursuant to this subdivision shall be void as contrary to public policy.

(c) The remedies specified in this section shall be in addition to any other remedy provided by law.

SEC. 19. Section 1436 of the Health and Safety Code is amended to read:

1436. (a) The state department shall provide for additional and ongoing training for inspectors charged

with implementation of this chapter in investigative techniques and standards relating to the quality of care provided by long-term health care facilities. The investigative-technique element of such training shall be adopted after consultation with the Department of Justice and such investigative training may, but need not, be provided through a contract with the Department of Justice.

(b) The department shall develop an interdisciplinary skilled nursing facility training program to educate and inform skilled nursing facility staff, inspectors, and advocates. This training program shall be implemented separately from the training programs related to conducting inspections or surveys.

SEC. 20. Section 1438 of the Health and Safety Code is amended to read:

1438. The state department shall review the effectiveness of the enforcement system in maintaining the quality of care provided by long-term health care facilities and shall submit a report to the Legislature on enforcement activities, on or before December 1, 2000, and annually thereafter, together with any recommendations of the state department for additional legislation which it deems necessary to improve the effectiveness of the enforcement system or to enhance the quality of care provided by long-term health care facilities.

SEC. 21. Section 1599.1 of the Health and Safety Code is amended to read:

1599.1. Written policies regarding the rights of patients shall be established and shall be made available to the patient, to any guardian, next of kin, sponsoring agency or representative payee, and to the public. Those policies and procedures shall ensure that each patient admitted to the facility has the following rights and is notified of the following facility obligations, in addition to those specified by regulation:

(a) The facility shall employ an adequate number of qualified personnel to carry out all of the functions of the facility.

(b) Each patient shall show evidence of good personal hygiene, be given care to prevent bedsores, and measures shall be used to prevent and reduce incontinence for each patient.

(c) The facility shall provide food of the quality and quantity to meet the patients' needs in accordance with physicians' orders.

(d) The facility shall provide an activity program staffed and equipped to meet the needs and interests of each patient and to encourage self-care and resumption of normal activities. Patients shall be encouraged to participate in activities suited to their individual needs.

(e) The facility shall be clean, sanitary, and in good repair at all times.

(f) A nurses' call system shall be maintained in operating order in all nursing units and provide visible and audible signal communication between nursing personnel and patients. Extension cords to each patient's bed shall be readily accessible to patients at all times.

(g) If a facility has a significant beneficial interest in an ancillary health service provider or if a facility knows that an ancillary health service provider has a significant beneficial interest in the facility, as provided by subdivision (a) of Section 1323, or if the facility has a significant beneficial interest in another facility, as provided by subdivision (c) of Section 1323, the facility shall disclose that interest in writing to the patient, or his or her representative, and advise the patient, or his or her representative, that the patient may choose to have another ancillary health service provider, or facility, as the case may be, provide any supplies or services ordered by a member of the medical staff of the facility.

(h) A facility is not required to make any disclosures required by this subdivision to any patient, or his or her representative, if the patient is enrolled in an organization or entity which provides or arranges for the provision of health care services in exchange for a prepaid capitation payment or premium.

(i) (1) A resident of a long-term health care facility may appeal the facility's refusal to readmit him or her, if

the resident has been hospitalized in an acute care hospital and asserts his or her right to readmission pursuant to bed hold provisions or readmission rights of either state or federal law. The appeal shall be adjudicated by the state hearing officers designated to adjudicate appeals of transfers and discharges of nursing facility residents.

(2) The facility shall readmit any resident who has filed an appeal under this subdivision, pending the final determination of the hearing officer, unless any of the following conditions apply:

(i) The resident qualifies for subacute care, as defined in Section 14132.25 of the Welfare and Institutions Code, or transitional inpatient care, as defined in Section 14132.22 of the Welfare and Institutions Code.

(ii) The long-term health care facility is a distinct part of an acute care hospital, the resident is eligible for reimbursement from the Medi-Cal program, and placement of the resident in a freestanding long-term health care facility, rather than a distinct part long-term health care facility, is authorized under Section 14091.21 of the Welfare and Institutions Code and corresponding regulations.

(iii) The facility can demonstrate to the department that the resident's health care needs cannot be met in the facility pending the hearing decision.

(3) If the resident is eligible for reimbursement from the Medi-Cal program, the resident shall have the right to remain in the hospital at the administrative day rate pending the final determination of the hearing officer. If the resident is not eligible for reimbursement from the Medi-Cal program, the resident shall have the right to remain in the hospital under other payment pending the final determination of the hearing officer, unless the resident agrees to placement in another facility.

(4) If the resident is eligible for reimbursement from the Medi-Cal program, the hearing shall be within seven days of the date of the request for readmission and a final determination shall be made within three days of the hearing.

(5) If the resident is not eligible for Medi-Cal, the hearing and final determination shall be made within 48 hours, unless the payer agrees to continue payment for a longer timeframe.

SEC. 22. Section 14124.7 of the Welfare and Institutions Code is amended to read:

14124.7. (a) No long-term health care facility participating as a provider under the Medi-Cal program shall seek to evict out of the facility or, effective January 1, 2001, transfer within the facility, any resident as a result of the resident changing his or her manner of purchasing the services from private payment or Medicare to Medi-Cal, except that a facility may transfer a resident from a private room to a semiprivate room if the resident changes to Medi-Cal payment status. This section applies to residents who have made a timely and good faith application for Medi-Cal benefits and for whom an eligibility determination has not yet been made.

(b) This section does not apply to any resident of a skilled nursing facility or intermediate care facility, receiving respite care services, as defined in Section 1418.1 of the Health and Safety Code, unless it is already being provided through a Medicaid waiver program pursuant to Section 1396n of Title 42 of the United States Code, or is already allowed as a covered service by the Medi-Cal program.

(c) Nothing in this section shall limit a facility's ability to transfer a resident within a facility, as provided by law, because of a change in a resident's health care needs.

SEC. 23. Section 14126.02 is added to the Welfare and Institutions Code, to read:

14126.02. (a) It is the intent of the Legislature to replace the current flat-rate Medi-Cal long-term care reimbursement system with a system that ensures individual access to appropriate long-term care services, promotes quality resident care, advances decent wages and benefits for nursing home workers, supports provider compliance with all applicable state and federal requirements, and encourages administrative efficiency.

(b) (1) By January 1, 2001, the department shall develop, and once enacted shall implement, the new Medi-Cal reimbursement system described in this section for skilled nursing facilities, excluding distinct part nursing facilities, as described in Sections 1250.8 and 1254 of the Health and Safety Code, that is based on the medical and mental health needs of the resident.

(2) The new system shall be developed in consultation with recognized experts, provider associations, consumer advocates, labor organizations, the attorney general, and the federal Health Care Financing Administration.

(3) The department shall submit a formal legislative proposal for statutory changes related to the new system no later than January 1, 2001.

(4) The new system shall be based on cost components that reflect direct resident care, indirect resident care, facility property, administrative and general costs, and any other components the department may deem appropriate. For each component, the department shall provide specific reimbursement methodologies. The daily rates payable under each of these cost components shall be capped at levels consistent with the goals of this section, including reasonable cost containment and the provision of funding necessary to meet the needs of the residents.

(c) The daily rates established by the department shall comply with the following requirements:

(1) The daily rates shall be adjusted for acuity based on individual resident care needs.

(2) (A) The daily rates shall reflect the updated cost of meeting individual resident care needs.

(B) Individual resident care needs shall be assessed through the minimum data set (MDS) and other factors the department may deem appropriate.

(C) Residents may be classified by specific categories based on the resource utilization group (RUG) system and other factors the department may deem appropriate.

(D) In establishing the specific categories, the department shall consider a separate assessment, categorization, and reimbursement methodology for

special populations including, but not limited to, residents with behavioral health problems, Alzheimer's disease, and developmental disabilities.

(3) (A) The acuity adjustment methodology shall ensure that any enhanced reimbursement is tied directly to increases in direct care staffing necessary to provide the appropriate level of services.

(B) In determining the skilled nursing facility and intermediate care facility rate, the department shall take into account reasonable costs of wage and benefit increases for personnel.

(4) The facility property cost component shall take into account capital-related and facility utilization cost factors to be determined by the department, reasonable renovation costs, and a reasonable return on investment. In formulating the facility property cost component, the department shall take into account the public interest in maximizing the use of Medi-Cal funds for the provision and improvement of direct and indirect care.

(d) The department shall create a method for the evaluation and prospective adjustment of reimbursement rates.

(e) The rates established by the department pursuant to this section shall be based on the rate components specified in this section and regional economic differences in nursing home costs. The rates may also reflect any of the following:

(1) Information and projections reflective of industry economic factors and trends in California, including, but not limited to, Office of Statewide Health Planning and Development Aggregate Long-Term Care Financial Data and the United States Bureau of Labor Statistics Producer Price Index.

(2) An annual process to evaluate each component of the rate consistent with factors set forth in this section.

(3) Cost studies conducted at least every five years with rates adjusted according to cost findings and the requirements of this section.

(f) The department shall establish an ongoing medical and financial review process to validate the accuracy in

conducting and reporting of resident assessments, staffing utilization, and financial reporting requirements under the new reimbursement methodology.

(g) (1) Notwithstanding any other provision of law, preliminary rates shall be published six months prior to the implementation of the rates to allow providers an opportunity to evaluate operational impact and adapt to the new system.

(2) Providers that are unable to adapt without adverse impact on their employees or residents shall be reimbursed at existing rates for an additional year.

(h) The department shall establish the minimum number of nursing hours for skilled nursing facilities, which shall not be less than provided in subdivision (b) of Section 1276.5 of the Health and Safety Code, on the basis of resident care needs as assessed, classified, and reimbursed under this section and shall implement these standards concurrent with the implementation of the new system. Providers shall fully comply with these standards within six months of implementation.

(i) The department shall establish an ongoing medical review and financial audit process to determine the accuracy of facility conducting and reporting of resident assessments, staffing utilization, and financial information requirements of the department.

(j) The department may consult with the University of California and any other appropriate research institutions to explore factors that may be used in restructuring the reimbursement methodology including, but not limited to, the feasibility of incorporating quality indicators into the reimbursement methodology.

(k) The department shall implement an automated utilization control system for both facility and ancillary services utilizing minimum data set information available to the department through existing technology.

(*l*) The department shall implement a control system to identify cases of suspected fraud and refer these cases to the Office of the Attorney General, Bureau of Medi-Cal Fraud.

(m) The total reimbursement to skilled nursing facilities under the Medi-Cal program shall comply with the applicable provisions of the state medicaid plan and shall be subject to an appropriation by the Legislature.

SEC. 23.5. Section 15630 of the Welfare and Institutions Code is amended to read:

15630. (a) Any person who has assumed full or intermittent responsibility for care or custody of an elder or dependent adult, whether or not that person receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, or employee of a county adult protective services agency or a local law enforcement agency is a mandated reporter.

(b) (1) Any mandated reporter, who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, abandonment, isolation, financial abuse, or neglect, or is told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, abandonment, isolation, financial abuse, or neglect, or reasonably suspects that abuse shall report the known or suspected instance of abuse by telephone immediately or as soon as practically possible, and by written report sent within two working days, as follows:

(A) (i) If the abuse has occurred in a long-term care facility, except a state mental health hospital or a state developmental center, the report shall be made to the local ombudsman or the local law enforcement agency.

(ii) Except in an emergency, the local ombudsman and the local law enforcement agency shall report any case of known or suspected abuse under this subparagraph to the State Department of Health Services.

(iii) Except in an emergency, the department, the local ombudsman, and the local law enforcement agency shall report any case of known or suspected criminal

activity related to abuse under this subparagraph to the Bureau of Medi-Cal Fraud, as soon as is practical unless it appears that any delay would cause destruction of evidence or any other disturbance of a crime scene by nonpeace officer personnel, in which case, the report shall be made immediately.

(B) If the suspected or alleged abuse occurred in a state mental health hospital or a state developmental center, the report shall be made to designated investigators of the State Department of Mental Health or the State Department of Developmental Services or to the local law enforcement agency.

Except in an emergency, the local law enforcement agency shall report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud, as soon as is practical.

(C) If the abuse has occurred any place other than one described in subparagraph (A), the report shall be made to the adult protective services agency or the local law enforcement agency.

(2) (A) A mandated reporter who is a physician and surgeon, a registered nurse, or a psychotherapist, as defined in Section 1010 of the Evidence Code, shall not be required to report, pursuant to paragraph (1), an incident where all of the following conditions exist:

(i) The mandated reporter has been told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, abandonment, isolation, financial abuse, or neglect.

(ii) The mandated reporter is not aware of any independent evidence that corroborates the statement that the abuse has occurred.

(iii) The elder or dependent adult has been diagnosed with a mental illness or dementia, or is the subject of a court-ordered conservatorship because of a mental illness or dementia.

(iv) In the exercise of clinical judgement, the physician and surgeon, the registered nurse, or the psychotherapist, as defined in Section 1010 of the

Evidence Code, reasonably believes that the abuse did not occur.

(B) This paragraph shall not be construed to impose upon mandated reporters a duty to investigate a known or suspected incident of abuse and shall not be construed to lessen or restrict any existing duty of mandated reporters.

(3) (A) In a long-term care facility, a mandated reporter shall not be required to report as a suspected incident of abuse, as defined in Section 15610.07, an incident where all of the following conditions exist:

(i) The mandated reporter is aware that there is a proper plan of care.

(ii) The mandated reporter is aware that the plan of care was properly provided or executed.

(iii) A physical, mental, or medical injury occurred as a result of care provided pursuant to clause (i) or (ii).

(iv) The mandated reporter reasonably believes that the injury was not the result of abuse.

(B) This paragraph shall not be construed to require a mandated reporter to seek, nor to preclude a mandated reporter from seeking, information regarding a known or suspected incident of abuse prior to reporting. This paragraph shall apply only to those categories of mandated reporters that the State Department of Health Services determines, upon approval by the Bureau of Medi-Cal Fraud and the state long-term care ombudsman, have access to plans of care and have the training and experience necessary to determine whether the conditions specified in this section have been met.

(c) (1) Any mandated reporter who has knowledge of, or reasonably suspects that, types of elder or dependent adult abuse for which reports are not mandated have been inflicted upon an elder or dependent adult or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of abuse.

(2) (A) If the suspected or alleged abuse occurred in a long-term care facility other than a state mental health

hospital or a state developmental center, the report may be made to the long-term care ombudsman program.

(B) Except in an emergency, the local ombudsman shall report any case of known or suspected abuse under this paragraph to the State Department of Health Services.

(C) Except in an emergency, the department, the local ombudsman, and the local law enforcement agency shall report any case of known or suspected criminal activity related to abuse under this paragraph to the Bureau of Medi-Cal Fraud, as soon as is practical unless it appears that any delay would cause destruction of evidence or any other disturbance of a crime scene by nonpeace officer personnel, in which case, the report shall be made immediately.

(3) If the suspected or alleged abuse occurred in a state mental health hospital, state developmental center, or a special treatment program as defined by Section 72443 of Title 22 of the California Code of Regulations, the report may be made to the designated investigator of the State Department of Mental Health or the State Department of Developmental Services, or to a local law enforcement agency or to the local ombudsman. Except in an emergency, the local ombudsman and the local law enforcement agency shall report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud, as soon as is practical.

(4) If the suspected or alleged abuse occurred in a place other than a place described in paragraph (2) or (3), the report may be made to the county adult protective services agency.

(5) If the conduct involves criminal activity not covered in subdivision (b), it may be immediately reported to the appropriate law enforcement agency.

(d) When two or more mandated reporters are present and jointly have knowledge or reasonably suspect that types of abuse of an elder or a dependent adult for which a report is or is not mandated have occurred, and when there is agreement among them, the telephone report may be made by a member of the team selected

by mutual agreement, and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(e) A telephone report of a known or suspected instance of elder or dependent adult abuse shall include the name of the person making the report, the name and age of the elder or dependent adult, the present location of the elder or dependent adult, the names and addresses of family members or any other person responsible for the elder or dependent adult's care, if known, the nature and extent of the elder or dependent adult's condition, the date of the incident, and any other information, including information that led that person to suspect elder or dependent adult abuse, requested by the agency receiving the report.

(f) The reporting duties under this section are individual, and no supervisor or administrator shall impede or inhibit the reporting duties, and no person making the report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting, ensure confidentiality, and apprise supervisors and administrators of reports may be established, provided they are not inconsistent with this chapter.

(g) (1) Whenever this section requires a county adult protective services agency to report to a law enforcement agency, the law enforcement agency shall, immediately upon request, provide a copy of its investigative report concerning the reported matter to that county adult protective services agency.

(2) Whenever this section requires a law enforcement agency to report to a county adult protective services agency, the county adult protective services agency shall, immediately upon request, provide a copy of its investigative report concerning the reported matter to that law enforcement agency.

(3) The requirement to disclose investigative reports pursuant to this subdivision shall not include the

disclosure of social services records or case files that are confidential, nor shall this subdivision be construed to allow disclosure of any reports or records if the disclosure would be prohibited by any other provision of state or federal law.

(h) Failure to report physical abuse, abandonment, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, is a misdemeanor, punishable by imprisonment for not more that six months in the county jail or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment. Any mandated reporter who willfully fails to report physical abuse, abandonment, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, where that abuse results in death or great bodily injury, shall be punished by imprisonment for not more than one year in a county jail or by a fine of not more than five thousand dollars ($5,000) or by both that fine and imprisonment.

SEC. 24. Section 15630 of the Welfare and Institutions Code is amended to read:

15630. (a) Any person who has assumed full or intermittent responsibility for care or custody of an elder or dependent adult, whether or not that person receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, or employee of a county adult protective services agency or a local law enforcement agency is a mandated reporter.

(b) (1) Any mandated reporter, who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, abandonment, isolation, financial abuse, or neglect, or is told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, abandonment, isolation, financial abuse, or neglect, or reasonably suspects abuse shall report the known or

suspected instance of abuse by telephone immediately or as soon as practically possible, and by written report sent within two working days, as follows:

(A) (i) If the abuse has occurred in a long-term care facility, except a state mental health hospital or a state developmental center, or special treatment program, as described in Section 72443 of Title 22 of the California Code of Regulations, the report shall be made to the local ombudsman or the local law enforcement agency.

(ii) Except in an emergency, the local ombudsman and the local law enforcement agency shall report any case of known or suspected abuse under this subparagraph to the State Department of Health Services.

(iii) Except in an emergency, the department, the local ombudsman, and the local law enforcement agency shall report any case of known or suspected criminal activity related to abuse under this subparagraph to the Bureau of Medi-Cal Fraud, as soon as is practical unless it appears that any delay would cause destruction of evidence or any other disturbance of a crime scene by nonpeace officer personnel, in which case, the report shall be made immediately.

(B) If the suspected or alleged abuse occurred in a state mental health hospital, a state developmental center, or a special treatment program, as described in Section 72443 of Title 22 of the California Code of Regulations, the report shall be made to designated investigators of the State Department of Mental Health or the State Department of Developmental Services or to the local law enforcement agency.

Except in an emergency, the local law enforcement agency shall report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud, as soon as is practical.

(C) If the abuse has occurred any place other than one described in subparagraph (A), the report shall be made to the adult protective services agency or the local law enforcement agency.

(2) (A) A mandated reporter shall not be required to report, as a suspected incident of abuse, as defined in Section 15610.07, an incident where all of the following conditions exist:

(i) The mandated reporter has been told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, abandonment, isolation, financial abuse, or neglect.

(ii) The mandated reporter is not aware of any independent evidence that corroborates the statement that the abuse has occurred.

(iii) The elder or dependent adult has been diagnosed with a mental illness, defect, dementia, or incapacity, or is the subject of a court-ordered conservatorship because of a mental illness, defect, dementia, or incapacity.

(iv) The mandated reporter reasonably believes that the abuse did not occur.

(B) This paragraph shall not be construed to impose upon mandated reporters a duty to investigate a known or suspected incident of abuse and shall not be construed to lessen or restrict any existing duty of mandated reporters.

(3) (A) In a long-term care facility, a mandated reporter shall not be required to report as a suspected incident of abuse, as defined in Section 15610.07, an incident where all of the following conditions exist:

(i) The mandated reporter is aware that there is a proper plan of care.

(ii) The mandated reporter is aware that the plan of care was properly provided or executed.

(iii) A physical, mental, or medical injury occurred as a result of care provided pursuant to clause (i) or (ii).

(iv) The mandated reporter reasonably believes that the injury was not the result of abuse.

(B) This paragraph shall not be construed to require a mandated reporter to seek, nor to preclude a mandated reporter from seeking, information regarding a known or suspected incident of abuse prior to reporting. This paragraph shall apply only to those categories of mandated reporters that the State Department of Health

Services determines, upon approval by the Bureau of Medi-Cal Fraud and the state long-term care ombudsman, have access to plans of care and have the training and experience necessary to determine whether the conditions specified in this section have been met.

(c) (1) Any mandated reporter who has knowledge of, or reasonably suspects that, types of elder or dependent adult abuse for which reports are not mandated have been inflicted upon an elder or dependent adult or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of abuse.

(2) (A) If the suspected or alleged abuse occurred in a long-term care facility other than a state mental health hospital or a state developmental center, the report may be made to the long-term care ombudsman program.

(B) Except in an emergency, the local ombudsman shall report any case of known or suspected abuse under this paragraph to the State Department of Health Services.

(C) Except in an emergency, the department, the local ombudsman, and the local law enforcement agency shall report any case of known or suspected criminal activity related to abuse under this paragraph to the Bureau of Medi-Cal Fraud, as soon as is practical unless it appears that any delay would cause destruction of evidence or any other disturbance of a crime scene by nonpeace officer personnel, in which case, the report shall be made immediately.

(3) If the suspected or alleged abuse occurred in a state mental health hospital, a state developmental center, or a special treatment program, as described in Section 72443 of Title 22 of the California Code of Regulations, the report may be made to the designated investigator of the State Department of Mental Health or the State Department of Developmental Services, or to a local law enforcement agency or to the local ombudsman. Except in an emergency, the local ombudsman and the local law enforcement agency shall

report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud, as soon as is practical.

(4) If the suspected or alleged abuse occurred in a place other than a place described in paragraph (2) or (3), the report may be made to the county adult protective services agency.

(5) If the conduct involves criminal activity not covered in subdivision (b), it may be immediately reported to the appropriate law enforcement agency.

(d) When two or more mandated reporters are present and jointly have knowledge or reasonably suspect that types of abuse of an elder or a dependent adult for which a report is or is not mandated have occurred, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement, and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(e) A telephone report of a known or suspected instance of elder or dependent adult abuse shall include the name of the person making the report, the name and age of the elder or dependent adult, the present location of the elder or dependent adult, the names and addresses of family members or any other person responsible for the elder or dependent adult's care, if known, the nature and extent of the elder or dependent adult's condition, the date of the incident, and any other information, including information that led that person to suspect elder or dependent adult abuse, requested by the agency receiving the report.

(f) The reporting duties under this section are individual, and no supervisor or administrator shall impede or inhibit the reporting duties, and no person making the report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting, ensure confidentiality, and apprise supervisors and administrators of reports may be

established, provided they are not inconsistent with this chapter.

(g) (1) Whenever this section requires a county adult protective services agency to report to a law enforcement agency, the law enforcement agency shall, immediately upon request, provide a copy of its investigative report concerning the reported matter to that county adult protective services agency.

(2) Whenever this section requires a law enforcement agency to report to a county adult protective services agency, the county adult protective services agency shall, immediately upon request, provide a copy of its investigative report concerning the reported matter to that law enforcement agency.

(3) The requirement to disclose investigative reports pursuant to this subdivision shall not include the disclosure of social services records or case files that are confidential, nor shall this subdivision be construed to allow disclosure of any reports or records if the disclosure would be prohibited by any other provision of state or federal law.

(h) Failure to report physical abuse, abandonment, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, is a misdemeanor, punishable by imprisonment for not more that six months in the county jail or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment. Any mandated reporter who willfully fails to report physical abuse, abandonment, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, where that abuse results in death or great bodily injury, shall be punished by imprisonment for not more than one year in a county jail or by a fine of not more than five thousand dollars ($5,000) or by both that fine and imprisonment.

SEC. 25. It is the intent of the Legislature to strive for uniformity and consistency in its statewide practices in surveying skilled nursing facilities so that variations will be lessened.

SEC. 26. (a) The Legislature finds and declares all of the following:

(1) There are over 1,150 volunteer long-term care ombudsmen in California.

(2) For over 20 years, long-term care ombudsmen have advocated on behalf of individuals living in 1,200 nursing homes and 5,800 residential care facilities for the elderly.

(3) These volunteers are responsible for reporting elder abuse, witnessing advance directives, and investigating and resolving care complaints.

(4) There are 1,800,000 Californians at the age of greatest vulnerability to institutionalization.

(5) Long-term care ombudsman programs have become an integral part of long-term care, offering people support, assistance, and care options during their time of need.

(b) The week commencing on the first Monday of May shall be proclaimed as ''Long-Term Care Ombudsman Week'' in recognition of the valuable services provided by long-term care ombudsmen.

SEC. 27. Section 9.5 of this bill incorporates amendments to Section 1337.3 of the Health and Safety Code proposed by both this bill and AB 656. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 1337.3 of the Health and Safety Code, and (3) this bill is enacted after AB 656, in which case Section 9 of this bill shall not become operative.

SEC. 28. Section 23.5 of this bill incorporates amendments to Section 15630 of the Welfare and Institutions Code proposed by both this bill and AB 739. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 15630 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 739, in which case Section 24 of this bill shall not become operative.

Approved _____, 1999

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Governor